

ELLEN F. ROSENBLUM  
Attorney General  
JILL SCHNEIDER #001619  
Senior Assistant Attorney General  
Department of Justice  
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Attorney for State Defendants Byers, Matteucci, Oregon Health Authority,  
Oregon State Hospital, and Sande

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DIANNE DAVIDOFF,  
Plaintiff,  
v.

DOLORES MATTEUCCI; LINDSEY  
SANDE, MONICA BYERS; DAVID  
HERNE; OREGON STATE HOSPITAL,  
OREGON HEALTH AUTHORITY,

Defendants.

Case No. 6:22-cv-00901-AA  
NOTICE OF SETTLEMENT

Pursuant to ORS 17.095, the State notifies the court that this action has been settled pursuant to the terms of a Settlement Agreement and Release, a copy of which is attached as Exhibit 1. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and as evidenced by the stipulation of the parties included on the signature pages of the Agreement, Plaintiff agrees to dismiss this action with prejudice.

DATED June 24, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

s/ Jill Schneider  
JILL SCHNEIDER #001619  
Senior Assistant Attorney General  
Jill.Schneider@doj.state.or.us  
Of Attorneys for State Defendants

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This action is currently pending in U.S. District Court Case Number 6:22-cv-00901-AA (“Action”). The parties to this Action on the Plaintiff’s side are the Plaintiff and Releasing Party, Dianne Davidoff, represented by Levi Merrithew Horst PC, and the Larsen-Davidoff Plaintiff Recovery Trust (the “Trust”). The defendants to this action are Oregon State Hospital, Dolores Matteucci, Monica Byers, Oregon Health Authority, and Lindsey Sande, represented by Jill Schneider (“Parties”).

Plaintiff, Dianne Davidoff, transferred the claims against defendants to the Trust, which remain unresolved prior to this agreement. Plaintiff did so for the preservation and administration of the claims, to reduce her tax burden, and for creditor protection. The Trust’s trustee is Eastern Point Trust Company, Committee of Co-Trustees, an experienced trustee of settlement trusts (the “Trustees”).

The Parties have agreed to settle this Action for the consideration set forth in this Settlement Agreement and Release of Claims (“Agreement”).

The terms of this Agreement are as follows:

**Settlement Payment:** As consideration for plaintiff’s Release of Claims, and on behalf of the Released Parties described below, the State of Oregon, by and through the Oregon Department of Administrative Services/Risk Management (“Risk Management”), shall pay the sum of Five Hundred Thousand Dollars \$500,000.00 (“settlement payment”) to the “Levi Merrithew Horst Settlement Trust fbo Larsen Davidoff” (the “Settlement Trust”), including any attorney fees and costs. For avoidance of all doubt, all attorney’s fees, expenses, and costs owed to plaintiff’s counsel shall be satisfied out of the Settlement Trust and not by the plaintiff. The effective date of this Agreement the date on which it is fully executed.

**Plaintiff’s Release of Claims:** In consideration for the above settlement payment, The Trust plaintiff and her Guardian, individually and on behalf of any heirs, executors, administrators, successors, agents, and assigns agrees to release, acquit, and forever discharge

defendants and all those in interest with them, including David Herne, the State of Oregon and all of its political subdivisions, agencies, departments, administrators, officers, current and former employees, agents, attorneys, and insurers (collectively "Released Parties"), from any and all claims, demands, or causes of action, whether known or unknown, under any legal, equitable, or other theory, that were or could have been raised in this Action.

The release, acquittal, and discharge described above ("Release") includes any claims against the Released Parties - including the Oregon Department of Justice and Risk Management - arising from the negotiation or execution of this Agreement. This Release also includes any damages (including past and future medical and mental health expenses, lost wages, impairment of earnings, emotional distress, pain and suffering, punitive damages, and any other compensatory, economic, noneconomic, nominal, or other forms of damage) and equitable relief (including injunctions or declaratory judgments), whether known or unknown, or which may develop after the effective date of this Agreement, and including any and all expenses (attorney fees, costs, and disbursements).

**Newly-Discovered Evidence:** The Parties agree that if, after the Effective Date of this Agreement, they discover evidence different from or in addition to the evidence which they now know of or possess, this Agreement remains in full force and effect.

**Each Party is Responsible for Own Attorney Fees and Costs:** The Parties acknowledge and agree that they are solely responsible for paying any attorney fees and costs they incurred and that neither the Parties nor their attorneys will seek any award of attorney fees or costs from the other Party.

**Plaintiff is Responsible for all Subrogation and Liens Except for Costs of Plaintiff's Care at the Oregon State Hospital:** In no event will defendants seek to recover any costs and expenses of plaintiff's care at the Oregon State Hospital and will fully cover the costs of plaintiff's care at the Oregon State Hospital. If any liens are presently pending stemming from plaintiff's care at the Oregon State Hospital, defendants will vacate those liens and will fully cover and pay the costs of plaintiff's care at the Oregon State Hospital. If defendants have

assigned any obligation or debt stemming from plaintiff's care at the Oregon State Hospital, defendants will defend, indemnify and hold plaintiff harmless from any and all assigned obligations. Plaintiff acknowledges that other than the costs and expenses of plaintiff's care at the Oregon State Hospital, all subrogation and lien claims arising out of contract or under state or federal law-including, but not limited to, subrogation or lien claims of or related to health care providers, insurance carriers (including personal injury protection or "PIP"), workers' compensation carriers, attorneys, and any federal or state agency or programs such as Medicare, Medicaid, or Social Security-are the sole and separate obligation of plaintiff which plaintiff agrees to pay or otherwise resolve. Plaintiff will defend, indemnify and hold harmless the Released Parties from and against all such lien and subrogation claims brought against the Released Parties.

**Medicare Disclaimer and Waiver:** ~~By signing below, plaintiff declares under penalty of perjury that: (1) plaintiff is not currently entitled to Medicare; and (2) none of the treatment received for the injury or injuries claimed in this Action (or related to the incident giving rise to this Action) or released in this Agreement were submitted to or paid for by Medicare. Plaintiff waives, releases, and forever discharges Released Parties from any obligations for any claim or future claim, known or unknown, arising out of the failure of Released Parties to provide for a primary payment or appropriate reimbursement to Medicare pursuant to 42 U.S.C. § 1395y(b)(3)(A), and plaintiff shall defend, indemnify and hold harmless the Released Parties for any claims arising out of arising out of 42 U.S.C. § 1395y(b).~~ Plaintiff further understands this settlement may impact, limit or preclude plaintiff's right or ability to receive future Medicare benefits arising out of the injuries alleged in this lawsuit.

**No Tax Representations:** No party warrants or represents how the United States Internal Revenue Service ("IRS"), the Oregon Department of Revenue, or other governmental authority will treat the settlement payment for tax purposes, and agree that no further payment of money from Released Parties will be due in the event that the payments or the release of the claims embodied in this Agreement or any portion thereof is found by the IRS, the Oregon

Department of Revenue, or other governmental authority to be, or result in, taxable income to any party.

Defendant shall not issue tax reporting of the settlement payment with respect to plaintiff. For tax reporting of payments to the Settlement Trust, plaintiff's counsel shall provide defendants a correct and fully executed IRS form W-9 for the Settlement Trust. Plaintiff, the Trust, and the Settlement Trust are solely responsible for the tax consequences of settlement payment, and plaintiff agrees not to hold the Released Parties responsible for taxes due.

**Entire Agreement:** This Agreement contains and constitutes the entire agreement and understanding of the Parties, notwithstanding any and all prior negotiations, discussions, undertakings or agreements made in arriving at this Agreement. There are no representations, agreements, or inducements between the Parties except as set forth expressly and specifically in this Agreement.

**No Admission of Fault or Future Precedent:** The Parties agree that this Agreement is not to be construed as an admission or proof of any liability or fault whatsoever on the part of the Released Parties. This Agreement does not establish a precedent in the settlement of any current or future grievance, claim of unfair labor practice, or other dispute among the Parties, and shall not be admissible as evidence in any future arbitration, administrative or court proceeding except in a proceeding brought to enforce the terms of this Agreement. In the event plaintiff pursues a claim waived or released pursuant to this Agreement, the Released Parties may plead this Agreement as an absolute defense.

**No Waiver:** The failure by any of the Parties to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Agreement or a course of dealing between the Parties, shall not be a waiver of such terms or conditions or of such Party's right to enforce each and every term and condition of this Agreement.

**Invalidity:** This Agreement does not waive any right that may not legally be waived. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision shall be deemed modified so as to

constitute a provision conforming as nearly as possible to such invalid, illegal, void, or unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions of this Agreement shall not be affected.

**Binding Agreement and Ownership of Claims:** This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors in interest, insurers and assigns

**Acknowledgment of the Terms of the Agreement:** By the signatures below, the Parties acknowledge that they have read and know the contents of this Agreement, that they fully understand the Agreement's terms, and that they enter the Agreement voluntarily for the purpose of making a full compromise and settlement. Each of the Parties further represents it has consulted or has had the opportunity to consult with legal counsel of its choice concerning the legal effect of this Agreement before signing it, and that each party executes this Agreement voluntarily. Further, the persons executing and delivering the Agreement represent and warrant that they are fully authorized to do so, and that the execution of delivery of the Agreement is lawful and voluntary.

**Judgment of Dismissal with Prejudice:** The Parties agree to a dismissal of the pending Action with prejudice, without costs or fees to either party. Counsel for plaintiff shall file a Stipulation of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). The Parties agree to execute these documents and any further documents and take any further actions, as may be reasonable and necessary, in order to carry out the purpose and intent of this Agreement.

**Waiver of Rule of Construction Against Drafter:** This Agreement was jointly drafted and approved by all Parties to this Agreement. Any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived.

**Counterparts:** This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, with each counterpart constituting an original. The executing Parties agree that a photocopy or other signed copy of this Agreement is as effective as the original.

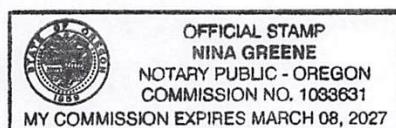
**Page 5 - SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

IT IS SO AGREED TO BY THE PARTIES:

Dianne Davidoff  
DIANNE DAVIDOFF  
Plaintiff

DATED this 17<sup>th</sup> day of June, 2024.

Subscribed and sworn to before me this 17<sup>th</sup> day of June, 2024, in the State of Oregon, County of Multnomah



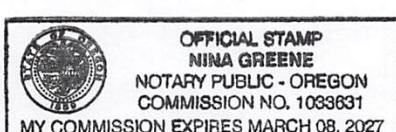
Nina Greene  
Notary Public for Oregon  
My commission expires: 3/8/27

MARJORIE

Margaret Trimpler  
Margaret Trimpler  
Plaintiff's Guardian

DATED this 17<sup>th</sup> day of June, 2024.

Subscribed and sworn to before me this 17<sup>th</sup> day of June, 2024, in the State of Oregon, County of Multnomah



Nina Greene  
Notary Public for Oregon  
My commission expires: 3/8/27

Plaintiff Recovery Trust  
Eastern Point Trust Company, Member of Trust Committee

By: \_\_\_\_\_  
Name and Title

DATED this \_\_\_\_\_ day of June, 2024.

BILLY MARTIN  
Oregon Health Authority

SIGNATURES CONTINUE ON NEXT PAGE

Page 6 - SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

DATED this \_\_\_\_\_ day of June, 2024.

**APPROVED AS TO FORM:**

  
**ETHAN LEVI**, OSB #994255  
Attorney for Plaintiff

DATED this 17<sup>th</sup> day of June, 2024.

**KEVIN LAFKY**, OSB #852633  
Attorney for Plaintiff

DATED this \_\_\_\_\_ day of June, 2024.

**JILL SCHNEIDER**, OSB #001619  
Senior Assistant Attorney General  
Attorney for Defendant State of Oregon

DATED this \_\_\_\_\_ day of June, 2024.

**IT IS SO AGREED TO BY THE PARTIES:**

**DIANNE DAVIDOFF**  
Plaintiff

DATED this \_\_\_\_\_ day of June, 2024.

Subscribed and sworn to before me this \_\_\_\_\_ day of June, 2024, in the State of Oregon, County of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

**Margaret Trimpler**  
Plaintiff's Guardian

DATED this \_\_\_\_\_ day of June, 2024.

Subscribed and sworn to before me this \_\_\_\_\_ day of June, 2024, in the State of Oregon, County of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

DocuSigned by:

*David Proano*

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\_\_\_\_\_  
Every Trust  
Eastern Point Trust Company, Member of Trust Committee

By: David Proano, Trust Officer  
Name and Title

DATED this 14th day of June, 2024.

**BILLY MARTIN**  
Oregon Health Authority

DATED this \_\_\_\_\_ day of June, 2024.

SIGNATURES CONTINUE ON NEXT PAGE

Page 6 - SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Exhibit 1, Page 8 of 10



**BILLY MARTIN**  
Oregon Health Authority

DATED this 4th day of June, 2024.

**APPROVED AS TO FORM:**

**ETHAN LEVI**, OSB #994255  
Attorney for Plaintiff

DATED this \_\_\_\_\_ day of June, 2024.

**KEVIN LAFKY**, OSB #852633  
Attorney for Plaintiff

DATED this \_\_\_\_\_ day of June, 2024.

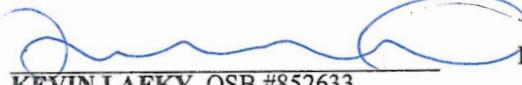
*s/ Jill Schneider*  
**JILL SCHNEIDER**, OSB #001619  
Senior Assistant Attorney General  
Attorney for Defendant State of Oregon

DATED this 14th day of June, 2024.

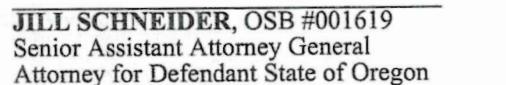
APPROVED AS TO FORM:

  
ETHAN LEVI, OSB #994255  
Attorney for Plaintiff

DATED this 17<sup>th</sup> day of June, 2024.

  
KEVIN LAFKY, OSB #852633  
Attorney for Plaintiff

DATED this 20<sup>th</sup> day of June, 2024.

  
JILL SCHNEIDER, OSB #001619  
Senior Assistant Attorney General  
Attorney for Defendant State of Oregon

DATED this \_\_\_\_\_ day of June, 2024.

**CERTIFICATE OF SERVICE**

I certify that on June 24, 2024, I served the foregoing NOTICE OF SETTLEMENT upon the parties hereto by the method indicated below, and addressed to the following:

Ethan Levi  
Noah Horst  
Viktoria Lo  
Levi Merrithew Horst PC  
610 SW Alder Street, Suite 415  
Portland, OR 97205  
*Of Attorneys for Plaintiff*

HAND DELIVERY  
 MAIL DELIVERY  
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 TELECOPY (FAX)  
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[ethan@lmhlegal.com](mailto:ethan@lmhlegal.com); [noah@lmhlegal.com](mailto:noah@lmhlegal.com);  
[viktoria@lmhlegal.com](mailto:viktoria@lmhlegal.com)  
 E-SERVE

Kevin T. Lafky  
Lafky & Lafky  
429 Court Street NE  
Salem OR 97301  
*Attorney for Defendant David Herne*

HAND DELIVERY  
 MAIL DELIVERY  
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 TELECOPY (FAX)  
 E-MAIL  
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 E-SERVE

DATED June 24, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

s/ Jill Schneider  
JILL SCHNEIDER #001619  
Senior Assistant Attorney General  
Trial Attorney  
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Of Attorneys for State Defendants